



TOWN OF WEARE
PLANNING BOARD
ZONING BOARD OF ADJUSTMENT
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Monday
thru
Friday
8 AM – 4:30 PM

**ZONING BOARD OF ADJUSTMENT
MINUTES
APRIL 6, 2010
(Approved as distributed 5-4-10)**

PRESENT: Jack Dearborn, Chairman; David W. Ruoff, Vice Chairman; Forrest Esenwine, Member; Neal Kurk, Alternate; Elwood Stagakis, Alternate; Malcolm Wright, Alternate

GUESTS: Chip Meany, Code Enforcement Officer; Jared Kosowicz; Patrick Colburn; Debra Boyll; Erin Brown; Frank Campana, Jim Donison; Susan Russell; Chuck Bolton; Ginger Esenwine; Sheila Savaria, Minute Taker.

I. INTRODUCTION:

Chairman Dearborn called this meeting to order at 7:32 PM and asked the board members present to introduce themselves. Chairman Dearborn explained to those present the way by which the board conducts business.

II. ADMINISTRATIVE ITEMS:

There were no administrative items to take up at this time. Chairman Dearborn appointed Neal Kurk, Malcolm Wright, David Ruoff, and Forrest Esenwine, and himself as voting members for tonight.

III. REQUEST TO ADDRESS THE BOARD:

Chuck Bolton requested a continuance of his case that is on the agenda due to a recent tentative agreement that would nullify his concerns. He asked the board to graciously consider his request. Mr. Bolton will likely be on the agenda for the next meeting assuming the issues will be resolved.

David Ruoff made a motion to continue case #0310 for the next meeting of the ZBA; Forrest Esenwine seconded the motion, all voted in favor.

IV. PUBLIC HEARINGS:

Case #0210 James Donison and Susan Russell (Continued Hearing)
Variance, Article 14, Section 14.2
The applicant is requesting permission to subdivide the lot into two (2) lots with less area than required by the ordinance.
Tax Map 405-002 222 Quaker Street

Chairman Jack Dearborn asked if the members of the board were clear on the new criteria for variances. There was discussion on what criteria has changed so they should follow the correct one. The board reviewed the ordinance book (NH Planning and Land Use Regulations book) to search for the correct variance to interpret the statute for the first time to make sure the law applies. Neal Kurk recommended that the chair consider asking Mr. Meany to contact the Local Government Center (LGC), which was actively involved in drafting and getting this piece of legislation through. Cordell Johnston is the lawyer in charge of these types of issues, and Mr. Kurk thinks he may have written an English translation of the statute that Planning Boards can use and can also be put in materials that are sent out to the public.

After more discussion and uncertainty about how the variances have changed, Chairman Dearborn explained to James Donison that since his application is not filled out completely according to the new law in question, he is at a disadvantage tonight and if they disapprove, he wouldn't get a second chance with this application.

Vice Chairman Ruoff explained to Mr. Donison that his application is filled out under the old law. Under the new law, he has the opportunity to convince the board to grant him a variance on the 3 points on his application. Tonight he can't do that because he hasn't filled out the application on those 3 points. Vice Chairman Ruoff continues to say that his reading of the law is that Mr. Donison can try to continue with the 2 points he does have filled out, but it deprives him of the chance of passing on the other 3 points, so he gets 2 chances, under the old law and new law, by filling out the whole application.

Vice Chairman Ruoff made a motion to accept the case #0210 as filed; Mr. Wright seconded.

CASE DISCUSSION: Chairman Dearborn explained that it wasn't for the fact that there was a brand new statute, but what will always happen is the board will accept the application, and then it is up to them to decide whether they want to go forward with it. Mr. Kurk feels that by accepting the application, the board is doing the applicant a disservice, and tonight the applicant is not in the position to make an intelligent determination as to whether or not he should continue. Mr. Kurk is also concerned that the board might make a mistake adversely affecting the process by going ahead without a properly completed application, which may include a change in the form. The problem Mr. Kurk has is that if it is not done the correct way, the result in the end will be denial and further legal action, or as Mr. Ruoff said earlier, it could be challenged by someone else who could win on technical grounds.

Chairman Dearborn asked for a vote to accept the case; the board voted unanimously opposed.

Vice Chairman Ruoff made a motion to waive the fee for those at the meeting who had to re-file their applications due to the disputed variance (Case #: 0210, 0410, 0510); Mr. Kurk seconded, all voted in favor.

There was discussion about the Christ Community Church application #0410 because it involved both a variance and a special exception. Mr. Meany explained that one is for a size issue, and one is a location issue which requires a variance. The application for the special exception is for moving the sign, once it is in a new location; they want to change it completely.

Mr. Kurk moved to accept the application #0410 for Christ Community Church. Vice Chairman Ruoff seconded, all voted unanimously opposed.

Mr. Kurk moved to accept the application #510 for Jared Kosowicz; Vice Chairman Ruoff seconded, all voted unanimously opposed.

Chairman Dearborn addressed Mr. Meany's question regarding when he could get the new application? Vice Chairman Ruoff volunteered to reword the new law so citizens could understand. Chuck Bolton asked if he revises the form and he mails it to them, can Mr. Meany accept it and put them on the docket for the next meeting? Mr. Kurk asked about abutters notices. Chairman Dearborn recommends resending them at the town's expense because the delay is a town issue. Mr. Meany clarified that the only new thing that needed to be filled out on the new application is the five points discussed (referred to application), and everything else would stay the same.

Mr. Esenwine commented that there should be a time frame for when the people are required to return applications back to make sure there is enough time to review them. Mr. Ruoff replied that they have to be returned 6 days prior to the next meeting, also allowing Mr. Meany enough time to send out abutters notices.

RECAP: The State changed the rules and the board did not recognize that until tonight's meeting. The board discovered that the applications were filled out in good faith by the applicants, but in fact, did not adhere to the latest version of the rules. Most of the information is on the application, it is simply a matter of organizing it on the form according to the new set of questions which Mr. Ruoff is going to take and rewrite with the instructions, send it to Mr. Meany, who will then send it to the applicants. The applicants are expected to return it by the Thursday before the next meeting. Chairman Dearborn commented that anyone with a variance is to take that action.

Mr. Donison asked Chairman Dearborn if when he gets the revised application, will it be completely different based on the RSA? Chairman Dearborn commented that it would probably be cut and paste. Mr. Donison asked if he can be sent the

Word version so he didn't have to hand write it? Mr. Meany said that as long as he gets it in Word, he can send it in Word.

There was a question on case #0410 regarding the Christ Community Church clarifying that if she gets the application in time, that she will be heard next month. Chairman Dearborn confirmed that.

Chairman Dearborn announced that the public hearings were finished at 8:19 PM.

V. OTHER BUSINESS:

There were no minutes to discuss.

Chairman Dearborn brought up the idea of holding a work session to verify that they understand the new variance before the next meeting. The board agreed that it was a good idea. Mr. Kurk commented that Cordell Johnston is the guy who could do it if he's available. Chairman Dearborn volunteered to call the LGC to set up a time for the meeting and would contact the other members of the board with that information.

VI. ADJOURNMENT:

As there was no further business to come before the board, Neal Kurk moved to adjourn the meeting at 8:32 PM; David Ruoff seconded the motion, all in favor.

Respectfully submitted,

Sheila R. Savaria, Minute Taker